

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket Nos. 36518/35619

|                       |   |                                  |
|-----------------------|---|----------------------------------|
| STATE OF IDAHO,       | ) | 2010 Unpublished Opinion No. 309 |
|                       | ) |                                  |
| Plaintiff-Respondent, | ) | Filed: January 11, 2010          |
|                       | ) |                                  |
| v.                    | ) | Stephen W. Kenyon, Clerk         |
|                       | ) |                                  |
| MARTIN RAY TROSPER,   | ) | THIS IS AN UNPUBLISHED           |
|                       | ) | OPINION AND SHALL NOT            |
| Defendant-Appellant.  | ) | BE CITED AS AUTHORITY            |
|                       | ) |                                  |

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Appeal from the District Court of the Fifth Judicial District, State of Idaho, Gooding County. Hon. R. Barry Wood, District Judge.

Order revoking probation and requiring execution of unified ten-year sentence for felony driving while under the influence; and judgment of conviction and consecutive unified sentence of ten years, with a minimum period of confinement of five years, for felony driving while under the influence, affirmed.

Molly J. Huskey, State Appellate Public Defender; Diane M. Walker, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Lori A. Fleming, Deputy Attorney General, Boise, for respondent.

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Before LANSING, Chief Judge; GUTIERREZ, Judge;  
and GRATTON, Judge

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PER CURIAM

This is an appeal from two separate cases which have been consolidated for purposes of appeal. In Docket No. 36519 Martin Ray Trosper pled guilty to felony operating a vehicle while under the influence of alcohol. Idaho Code §§ 18-8004, 18-8005(7)(b). The district court imposed a ten-year determinate sentence, but after a period of retained jurisdiction, suspended the sentence and placed Trosper on supervised probation for five years. Subsequently, in Docket No. 36518, Trosper pled guilty to felony operating a vehicle while under the influence of alcohol. Idaho Code §§ 18-8004, 18-8005(7)(b). The district court then revoked probation and ordered that the original sentence in Docket No. 36519 be imposed. The district court further

sentenced Trosper to a consecutive unified sentence of ten years with five years determinate in Docket No. 36518. Trosper appeals asserting that his combined unified sentences of twenty years with fifteen years determinate are excessive.

When we review a sentence that is ordered into execution following a period of probation, we do not base our review solely upon the facts existing when the sentence was imposed. *State v. Whittle*, 145 Idaho 49, 52, 175 P.3d 211, 214 (Ct. App. 2007). Rather we also examine all the circumstances bearing upon the decision to revoke probation and require execution of the sentence, including events that occurred between the original pronouncement of the sentence and the revocation of probation. *Id.*

Sentencing is a matter for the trial court's discretion. Both our standard of review and the factors to be considered in evaluating the reasonableness of a sentence are well established and need not be repeated here. *See State v. Hernandez*, 121 Idaho 114, 117-18, 822 P.2d 1011, 1014-15 (Ct. App. 1991); *State v. Lopez*, 106 Idaho 447, 449-51, 680 P.2d 869, 871-73 (Ct. App. 1984); *State v. Toohill*, 103 Idaho 565, 568, 650 P.2d 707, 710 (Ct. App. 1982). When reviewing the length of a sentence, we consider the defendant's entire sentence. *State v. Oliver*, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007).

Applying the foregoing standards, and having reviewed the record in these cases, we cannot say that the district court abused its discretion in revoking probation, in ordering execution of Trosper's original sentence without modification, or in his consecutive sentence. Therefore, the order revoking probation and directing execution of Trosper's previously suspended sentence in Docket No. 36519 and the consecutive sentence in Docket No. 36518 are affirmed.